

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No.: 3:13-CR-6-TAV-JEM-1
	)	
JOSHUA MARQUIS YOUNG,	)	
	)	
Defendant.	)	

**MEMORANDUM OPINION AND ORDER**

This criminal case is before the Court on defendant's pro se motion for a sentence reduction [Doc. 38]. In defendant's motion, defendant requests that the Court resentence him (i) due to extraordinary and compelling reasons, namely a change in law; and (ii) pursuant to 18 U.S.C. § 3582(c)(2) and in accordance with Amendment 821 to the United States Sentencing Guidelines Manual. The Federal Defender Services of Eastern Tennessee has filed two notices of no intention to supplement the pro se motion [Docs. 39, 41], and the government filed a response in opposition [Doc. 40]. For the following reasons, defendant's pro se motion [Doc. 38] is **DENIED**.

**I. Factual Background**

Defendant pleaded guilty to possession with intent to distribute a quantity of a mixture and substance containing a detectable amount of cocaine base, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C), and possession of a firearm and ammunition as a convicted felon, in violation of 18 U.S.C. §§ 922(g)(1) and 924(e) [Doc. 23]. Defendant had a total criminal history score of 11, resulting in an initial criminal history category of

V [Revised Presentence Investigation Report (“PSR”) ¶ 41]. Defendant was also designated as a career offender; therefore, his criminal history category was VI [*Id.* ¶ 42]. Based on defendant’s offense level of 31 and criminal history category of VI, defendant’s guideline range was 188 to 235 months’ imprisonment [*Id.* ¶ 63].

The Court sentenced defendant on November 12, 2014, to 188 months’ imprisonment [Doc. 33]. According to the Bureau of Prisons’ website, defendant is presently scheduled for release on March 4, 2026. Inmate Locator, Federal Bureau of Prisons, *available at* <https://www.bop.gov/inmateloc/> (accessed October 8, 2024).

## **II. Compassionate Release**

### **A. Standard of Review**

A court generally lacks “the authority to change or modify [a sentence, once imposed,] unless such authority is expressly granted by statute.” *United States v. Thompson*, 714 F.3d 946, 948 (6th Cir. 2013) (citing *United States v. Curry*, 606 F.3d 323, 326 (6th Cir. 2010)). The First Step Act of 2018’s amendment of § 3582(c)(1)(A) revised one such exception. First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194, 5239 (2018). Prior to the First Step Act, a district court could grant relief under § 3582(c)(1)(A) only on motion of the Director of the Bureau of Prisons. Now a court may modify a defendant’s sentence upon a motion by a defendant if the defendant has exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant’s behalf or after the lapse of 30 days from the receipt of such a request by the warden of the defendant’s facility, whichever is earlier. 18 U.S.C. § 3582(c)(1)(A).

If the defendant surmounts this preliminary hurdle, the Court may grant a sentence reduction “after considering the factors set forth in § 3553(a) to the extent that they are applicable” if it finds:

- (i) extraordinary and compelling reasons warrant such a reduction; or
  - (ii) the defendant is at least 70 years of age, has served at least 30 years in prison, pursuant to a sentence imposed under section 3559(c), for the offense or offenses for which the defendant is currently imprisoned, and a determination has been made by the Director of the Bureau of Prisons that the defendant is not a danger to the safety of any other person or the community, as provided under section 3142(g);
- and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission . . . .

*Id.* Defendant seeks relief under § 3582(c)(1)(A)(i) [Doc. 38].

If the exhaustion requirement is satisfied, courts must then follow the statute’s three-step test:

At step one, a court must “find[ ]” whether “extraordinary and compelling reasons warrant” a sentence reduction. At step two, a court must “find[ ]” whether “such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.” The Commission’s policy statement on compassionate release resides in U.S.S.G. § 1B1.13. Thus, if § 1B1.13 is still “applicable,” courts must “follow the Commission’s instructions in [§ 1B1.13] to determine the prisoner’s eligibility for a sentence modification and the extent of the reduction authorized.” At step three, “§ 3582(c)[(1)(A)] instructs a court to consider any applicable § 3553(a) factors and determine whether, in its discretion, the reduction authorized by [steps one and two] is warranted in whole or in part under the particular circumstances of the case.”

*United States v. Jones*, 980 F.3d 1098, 1107–08 (6th Cir. 2020) (internal citations omitted).

In considering a compassionate release motion, “district courts may deny compassionate release motions when any of the three prerequisites listed in § 3582(c)(1)(A) is lacking and

do not need to address the others” but must “address all three steps” if granting such a motion. *United States v. Elias*, 984 F.3d 516, 519 (6th Cir. 2021).

## **B. Analysis**

### **1. Exhaustion**

The Court first examines whether defendant has satisfied § 3582(c)(1)(A)’s exhaustion requirement, which is a mandatory prerequisite to consideration of a compassionate release request on the merits. *United States v. Alam*, 960 F.3d 831, 833–34 (6th Cir. 2020). “When ‘properly invoked,’ mandatory claim-processing rules ‘must be enforced.’” *Id.* at 834 (quoting *Hamer v. Neighborhood Hous. Servs. of Chi.*, 583 U.S. 17, 20 (2017)). The only exceptions to such a mandatory claim-processing rule are waiver and forfeiture. *Id.* (citing *United States v. Cotton*, 535 U.S. 625, 630 (2002)).

In this case, defendant sought compassionate release from the BOP in November 2023 [Doc. 38, p. 9] prior to filing the instant motion. The government does not appear to contest defendant’s exhaustion requirement [*see generally* Doc. 40]. Thus, the Court will evaluate defendant’s motion according to the three-step test explained above.

### **2. Extraordinary and Compelling Reasons**

Turning to whether defendant has set forth extraordinary and compelling grounds for relief, the Court first notes that the Sixth Circuit previously held that “[i]n cases where incarcerated persons file motions for compassionate release, federal judges may skip step two of the § 3582(c)(1)(A) inquiry and have full discretion to define ‘extraordinary and compelling’ without consulting the policy statement of § 1B1.13.” *United States v. Jones*,

980 F.3d 1098, 1111 (6th Cir. 2020). This was so because the applicable policy statement, United States Sentencing Guideline § 1B1.13, as written at the time, did not contemplate inmate-filed motions for compassionate release, but instead, was limited to circumstances where the Bureau of Prisons filed a motion on an inmate’s behalf. *Id.* at 1109–10; *see also* U.S.S.G. § 1B1.13 (2018).

However, the Sentencing Commission amended the policy statement in § 1B1.13, effective November 1, 2023, to encompass inmate-filed motions for compassionate release. U.S.S.G. § 1B1.13 (2023). It thus appears that the Sixth Circuit’s prior ruling that § 1B1.13 is not an applicable policy statement to inmate-filed motions for compassionate release is no longer consistent with the Guidelines. *See United States v. Nash*, No. 23-3635, 2024 WL 1979067, at \*3 (6th Cir. Apr. 30, 2024) (noting the amendment to § 1B1.13 and stating that “prior to [the date of amendment], no guideline policy statement applied to compassionate-release motions brought by defendants, and a district court could deny a defendant-filed motion without reference to any policy statement”); *see also United States v. Ringgold*, No. ELH-17-232, 2023 WL 7410895, at \*5–6 (D. Md. Nov. 8, 2023) (“[I]t appears that the Fourth Circuit’s conclusion in *McCoy*, 981 F.3d at 281, to the effect that ‘§ 1B1.13 is not an ‘applicable’ policy statement,’ is no longer consistent with the Guidelines. This is because the Policy Statement is now expressly applicable to defendant-filed motions pursuant to 18 U.S.C. § 3582(c)(1)(A).”) However, “[t]he new policy statement largely preserves the discretion district courts held to consider any

extraordinary and compelling reason for release.” *United States v. Davis*, No. 3:20-cr-16, 2023 WL 7356579, at \*2 (W.D. N.C. Nov. 7, 2023).

As amended, § 1B1.13(b) states that “[e]xtraordinary and compelling reasons exist under any of the following circumstances or a combination thereof,” and discusses when the medical circumstances of the defendant, the age of the defendant, the family circumstances of the defendant, the defendant’s victimization in custody, and other reasons may constitute extraordinary circumstances. U.S.S.G. § 1B1.13(b)(1)–(5). Here, defendant cites the following as an extraordinary and compelling grounds warranting his release: a change in law stemming from the Sixth Circuit’s decision in *United States v. Havis*, 927 F.3d 654 (6th Cir. 2019) (en banc) (per curiam).

**a. Changes in Law**

The amended policy statement provides the following guidance as to whether changes to non-retroactive law can be an extraordinary and compelling reason for release:

If a defendant received an unusually long sentence and has served at least 10 years of the term of imprisonment, a change in the law (other than an amendment to the Guidelines Manual that has not been made retroactive) may be considered in determining whether the defendant presents an extraordinary and compelling reason, but only where such change would produce a gross disparity between the sentence being served and the sentence likely to be imposed at the time the motion is filed, and after full consideration of the defendant’s individualized circumstances.

Except as provided [above], a change in the law (including an amendment to the Guidelines Manual that has not been made retroactive) shall not be considered for purposes of determining whether an extraordinary and compelling reason exists under this policy statement. However, if a defendant otherwise establishes that extraordinary and compelling reasons warrant a sentence reduction under this policy statement, a change in the law (including an amendment to the Guidelines Manual that has not been made

retroactive) may be considered for purposes of determining the extent of any such reduction.

U.S.S.G. §§ 1B1.13(b)(6), (c).

In *Havis*, an en banc panel of the Sixth Circuit vacated the defendant's sentence on grounds that a "'controlled substance offense' does not include attempt crimes" within the meaning of the Sentencing Guidelines. 927 F.3d at 387. However, the Sixth Circuit has since acknowledged that the "Sentencing Commission responded to *Havis* by adding language [that] . . . covers 'the offenses of aiding and abetting, attempting to commit, or conspiring to commit' any controlled substance offense or crime of violence." *United States v. Dorsey*, 91 F.4th 453, 459 (6th Cir. 2024) (quoting U.S.S.G. § 4B1.2(d)), *cert. denied sub nom. Dorsey v. United States*, No. 24-211, 2024 WL 4427261 (U.S. Oct. 7, 2024). This amendment to the guidelines functionally overruled any new rule announced in *Havis*. Therefore, it is unnecessary for the Court to evaluate retroactivity or whether defendant "received an unusually long sentence," U.S.S.G. §§ 1B1.13(b)(6), because defendant has not identified a valid change in law that would bear on his sentence. Accordingly, under U.S.S.G. § 1B1.13, defendant's proposed grounds do not constitute an extraordinary reason for the Court to reduce his sentence pursuant to 18 U.S.C. § 3582(c)(1)(A). For the reasons set forth above, defendant's motion for compassionate release [Doc. 38] is **DENIED**.

### III. Amendment 821

#### A. Standard of Review

“Federal courts are forbidden, as a general matter, to modify a term of imprisonment once it has been imposed, but the rule of finality is subject to a few narrow exceptions.”

*Freeman v. United States*, 564 U.S. 522, 526 (2011) (internal citation and quotation marks omitted). One exception is identified in 18 U.S.C. § 3582(c)(2):

[I]n the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission . . . , the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

The United States Supreme Court has interpreted § 3582(c)(2) as setting forth two requirements for a sentence reduction. First, “the defendant [must] ha[ve] been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission[.]” *United States v. Riley*, 726 F.3d 756, 758 (6th Cir. 2013) (internal quotation marks and citation omitted). Second, “such reduction [must be] consistent with applicable policy statements issued by the Sentencing Commission.” *Id.* (internal quotation marks omitted). If the reviewing court determines that the defendant is eligible for a sentence reduction, then “[t]he court may then ‘consider whether the authorized reduction is warranted, either in whole or in part, according to the factors set forth in § 3553(a).’” *United States v. Thompson*, 714 F.3d 946, 949 (6th Cir. 2013) (quoting *Dillon v. United States*, 560 U.S. 817, 826 (2010)).



In determining whether a defendant has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission, the Court must first determine “the amended guideline range that would have been applicable to the defendant had the relevant amendment been in effect at the time of the initial sentencing.” *Dillon*, 560 U.S. at 827 (internal quotation marks and citation omitted); *see also* U.S. Sent’g Guidelines Manual § 1B1.10(b)(1) (U.S. Sent’g Comm’n 2023). Other than substituting Amendment 821 for the corresponding provision applicable when the defendant was originally sentenced, the Court “shall leave all other guideline application decisions unaffected.” *Id.* And the Court “shall not” reduce a defendant’s term of imprisonment to a term “less than the minimum of the amended guideline range,” nor to a term “less than the term of imprisonment the defendant has already served.” *Id.*; U.S. Sent’g Guidelines Manual § 1B1.10(b)(2)(A), (C).<sup>1</sup> In addition to these limits, section 1B1.10 states that a court must also consider the § 3553 factors and the danger to the public created by any reduction in a defendant’s sentence. U.S. Sent’g Guidelines Manual § 1B1.10 cmt. n.1(B)(ii). A court may further consider a defendant’s post-sentencing conduct. *Id.* at n.1(B)(iii).

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<sup>1</sup> Section 1B1.10 provides one exception to the rule that a defendant may not receive a sentence below the amended guideline range—namely, if the defendant originally received a below-guideline sentence “pursuant to a government motion to reflect the defendant’s substantial assistance to authorities.” U.S. Sent’g Guidelines § 1B1.10(b)(2)(B).

## **B. Analysis**

Amendment 821 to the Guidelines, which became effective on November 1, 2023, has two relevant parts. U.S. Sent’g Guidelines Supp. to App. C, amend. 821. First, Amendment 821 revises section 4A1.1’s provision for the addition of “status points” to a defendant’s criminal history points if the defendant committed the offense of conviction while under a criminal justice sentence. *Id.* Section 4A1.1(d) previously provided for two criminal history points to be added if the defendant committed the offense of conviction while under any criminal justice sentence. *Id.* Under Amendment 821, section 4A1.1(e) now provides for the addition of one criminal history point “if the defendant: (1) receives 7 or more points under subsections (a) through (d), and (2) committed the instant offense while under any criminal justice sentence, including probation, parole, supervised release, imprisonment, work release, or escape status.” *Id.* A defendant with less than seven criminal history points receives no additional “status points” under § 4A1.1. *Id.*

Secondly, Amendment 821 adds new section 4C1.1, which provides certain “zero-point offenders” with a two-level reduction to their offense level. *Id.* The two-level reduction applies if a defendant meets all of the following criteria:

- (1) the defendant did not receive any criminal history points from Chapter Four, Part A;
- (2) the defendant did not receive an adjustment under §3A1.4 (Terrorism);
- (3) the defendant did not use violence or credible threats of violence in connection with the offense;
- (4) the offense did not result in death or serious bodily injury;
- (5) the instant offense of conviction is not a sex offense;
- (6) the defendant did not personally cause substantial financial hardship;

- (7) the defendant did not possess, receive, purchase, transport, transfer, sell, or otherwise dispose of a firearm or other dangerous weapon (or induce another participant to do so) in connection with the offense;
- (8) the instant offense of conviction is not covered by §2H1.1 (Offenses Involving Individual Rights);
- (9) the defendant did not receive an adjustment under §3A1.1 (Hate Crime Motivation or Vulnerable Victim) or §3A1.5 (Serious Human Rights Offense); and
- (10) the defendant did not receive an adjustment under §3B1.1 (Aggravating Role) and was not engaged in a continuing criminal enterprise, as defined in 21 U.S.C. § 848[.]

*Id.* Pursuant to Amendment 825, the Sentencing Commission amended section 1B1.10(d) to include these portions of Amendment 821 in the list of retroactive amendments. U.S. Sent’g Guidelines Supp. to App. C, amend. 825. The Sentencing Commission also amended section 1B1.10(e) to specify that “[t]he court shall not order a reduced term of imprisonment based on . . . Amendment 821 unless the effective date of the court’s order is February 1, 2024, or later.” *Id.*

Here, defendant seeks a sentence reduction under § 4A1.1 of Amendment 821, which reduced the “status points” added to defendant’s criminal history from two points to one point where he “receives 7 or more points under subsections (a) through (d).” *Id.* Because defendant’s prior convictions yielded 9 criminal history points, and he is now subject to only 1 status point, his total criminal history points amount to 10 rather than 11. However, even in light of this reduction, defendant’s criminal history category remains at VI due to his career offender status. *See* USSG § 4B1.1(b). Therefore, the applicable guideline range in this case remains 188 to 235 months’ imprisonment. *Id.*

Because defendant's guideline range is unchanged in light of Amendment 821's revision of section 4A1.1, he is ineligible for a reduced sentence. For the reasons stated herein, defendant's motion for a sentence reduction under Amendment 821 [Doc. 38] is **DENIED**.

#### **IV. Conclusion**

For the reasons stated herein, defendant's motion [Doc. 38] is **DENIED**.

IT IS SO ORDERED.

s/ Thomas A. Varlan  
UNITED STATES DISTRICT JUDGE